

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 533

AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 22-8-1.1-35.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 35.6. (a) A safety order, penalty assessment, or notice of failure to correct violation which has become final, either through lack of any contest under section 28.1 of this chapter, or after final action by the board, or after judicial review, shall be enforced by the commissioner **under this section or section 35.7 of this chapter. The remedies provided in this chapter are cumulative and are in addition to any other remedy available to the commissioner. The commissioner's decision to pursue one (1) of the remedies does not preclude the subsequent or corresponding use of one (1) or more of the other remedies available to the commissioner.**

(b) If an employer fails to comply, the commissioner ~~shall~~ **may** refer the matter to the attorney general, who shall promptly institute proceedings under IC 4-21.5-6 to enforce the safety order, penalty assessment, or notice of failure to correct violation.

SECTION 2. IC 22-8-1.1-35.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 35.7. (a) If an employer fails to pay a penalty assessed under this chapter within ten (10) calendar days of the date that the assessment is final under section 35.6 of this chapter, the commissioner or the commissioner's**

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representative may file with the circuit court clerk of any county in which the employer owns any interest in property, real or personal, tangible or intangible, a warrant for the amount of the assessment and interest, if applicable. The commissioner or the commissioner's representative may also send the warrant to the sheriff of any county in which the employer owns real or personal property and direct the sheriff to file the warrant with the circuit court clerk.

(b) When the circuit court clerk receives the warrant from the commissioner, the commissioner's representative, or the sheriff, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record listing the following:

- (1) The name of the employer stated in the warrant.
- (2) The amount of the warrant.
- (3) The date the warrant was filed with the clerk.

(c) When the entry is made, the total amount of the warrant becomes a judgment against the employer. The judgment creates a lien in favor of the state that attaches to all the employer's interest in any real or personal property in the county.

(d) At least thirty (30) calendar days before the date on which the commissioner intends to file a warrant as provided by subsection (a) in order to impose a lien on real or personal property, the commissioner or the commissioner's representative must send a written notice:

- (1) to the owner of the real or personal property that would be subject to the lien; or
 - (2) if the owner of record cannot be identified, to the tenant or other person having control of the real or personal property;
- of the date on which the commissioner or the commissioner's representative intends to file the warrant in order to impose a lien on the real or personal property. The commissioner or the commissioner's representative shall provide the circuit court clerk of the county in which the real or personal property that would be subject to the lien is located with a copy of the written notice described in this subsection.

(e) A judgment obtained under subsection (c) is valid for ten (10) years from the date the judgement is filed.

(f) A judgment obtained under subsection (c) shall be released by the commissioner:

- (1) after the judgment, including all accrued interest to the date of payment, has been fully satisfied; or

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(2) if the commissioner determines that the assessment or the issuance of the warrant was in error.

(g) If the commissioner determines that the filing of a warrant was in error, the commissioner or the commissioner's representative shall mail a release of the judgment to the employer and the circuit court clerk of each county where the warrant was filed. The commissioner or the commissioner's representative shall mail the release as soon as possible but not later than seven (7) calendar days after:

(1) the determination by the commissioner that the filing of the warrant was in error; and

(2) the receipt of information by the commissioner or the commissioner's representative that the judgment has been recorded under subsection (b).

(h) A release issued under subsection (g) must state that the filing of the warrant was in error.

(i) After a warrant becomes a judgment under subsection (b), the commissioner may levy upon the property of the employer that is held by a financial institution (as defined in IC 5-13-4-10) by sending a claim to the financial institution. Upon receipt of a claim under this subsection, the financial institution shall surrender to the commissioner or the commissioner's representative the employer's property. If the employer's property exceeds the amount owed to the state by the employer, the financial institution shall surrender the employer's property in a amount equal to the amount owed. After receiving the commissioner's notice of levy, the financial institution is required to place a sixty (60) day hold on or restriction on the withdrawal of funds the employer has on deposit or subsequently deposits, in an amount not to exceed the amount owed.

SECTION 3. [EFFECTIVE JULY 1, 2009] (a) As used in this SECTION, "commission" refers to the pension management oversight commission established by IC 2-5-12-1.

(b) The general assembly urges the legislative council to assign to the commission the study of whether an individual who has been terminated from employment must file a wage claim with the department of labor before filing a civil lawsuit seeking recovery of unpaid wages under IC 22-2-5-2.

(c) If the commission is assigned the topic described in subsection (b), the commission shall issue a final report to the legislative council containing the commission's findings and recommendations concerning the topic, including any

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recommended legislation, not later than November 1, 2009.

(d) This SECTION expires June 30, 2010.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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